

Message

From: Calli, Rosemary [Calli.Rosemary@epa.gov]
Sent: 9/4/2018 5:13:49 PM
To: Ghosh, Mita [Ghosh.Mita@epa.gov]; Hicks, Matt [Hicks.Matthew@epa.gov]; Hurlid, Kathy [Hurlid.Kathy@epa.gov]; Kupchan, Simma [Kupchan.Simma@epa.gov]; Mancusi-Ungaro, Philip [Mancusi-Ungaro.Philip@epa.gov]; McGill, Thomas [McGill.Thomas@epa.gov]; Parker, Christopher [Parker.Christopher@epa.gov]; Speir, Jeffrey [speir.jeffrey@epa.gov]; Purify, Johnnie [Purify.Johnnie@epa.gov]
Subject: FW: MOA with track changes
Attachments: Draft CWA 404(g) MOA Between DA and FL DEP 08312018 (Track Changes).docx

Hi, folks – I asked DEP for the latest on the Corps MOA, and received the attached. In it, the changes previously tracked were accepted, plus a few more changes were made.

The additional non-tracked changes I see made between the two versions are:

- In II.C.: “Modifications to the Retained Waters List and GIS layer, including identification of the head of navigation, will only be made in the following circumstances: when the Corps makes a navigability determination; a Federal court determines a water to be navigable makes a navigability determination the United States Congress makes a navigability determination;”

- this addition at the very end of II.C: “Nothing in this Agreement affects the authority of the Corps to make determinations of navigability pursuant to 33 C.F.R. Part 329.”

- this addition at the very end of III.C: “Nothing in this Agreement affects the authority of the Corps in implementing regulatory programs pursuant to the RHA.”

- “[Corps provisional]” was struck from the beginning of V.B.(2)

- In VI.C., which I believe is a good improvement:

4 C. Use of Credits from Corps Approved Mitigation Banks for State 404 Permits

5 DEP may approve the use of credits from a Corps-approved mitigation bank or in-lieu fee
6 program to provide compensatory mitigation for permits issued under the State 404 Program, if as
7 long as the authorized activity use of credits is located in the service area of consistent with the
8 approved mitigation bank banking instrument or in-lieu fee program instrument.

From: Mason, Heather [mailto:Heather.Mason@dep.state.fl.us]
Sent: Tuesday, September 4, 2018 11:53 AM
To: Calli, Rosemary <Calli.Rosemary@epa.gov>
Cc: Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Simmons, Kristen B. <Kristen.B.Simmons@dep.state.fl.us>
Subject: RE: MOA with track changes

Hi Rosemary,

The attached is the latest. We’ve been working back and forth with Josh Holmes at the Corps. The highlighted stuff is still being discussed by higher leadership.

Thanks!

Heather
850-245-8480

From: Calli, Rosemary [<mailto:Calli.Rosemary@epa.gov>]
Sent: Tuesday, September 4, 2018 11:31 AM
To: Mason, Heather <Heather.Mason@dep.state.fl.us>
Subject: FW: MOA with track changes

Hi, Heather – I got an out-of-office response from Kristen. Do you know if this language was mutually agreed to by the Corps and FDEP?

From: Calli, Rosemary
Sent: Tuesday, September 4, 2018 11:29 AM
To: 'Simmons, Kristen B.' <Kristen.B.Simmons@dep.state.fl.us>
Subject: RE: MOA with track changes

Hi, Kristen – Was this latest version made with both Corps and FDEP participation (i.e., everybody agreed to this language)?

From: Simmons, Kristen B. [<mailto:Kristen.B.Simmons@dep.state.fl.us>]
Sent: Thursday, August 30, 2018 4:32 PM
To: Hurlid, Kathy <Hurlid.Kathy@epa.gov>; Hicks, Matt <Hicks.Matthew@epa.gov>; Calli, Rosemary <Calli.Rosemary@epa.gov>
Subject: Fw: MOA with track changes

Here are the track changes (the strikethroughs are the Corps language).

From: Simmons, Kristen B.
Sent: Thursday, August 30, 2018 4:20 PM
To: Mancusi-Ungaro, Philip
Subject: MOA with track changes

